

Fahrenheit 180: DOJ Reverses Course, Abandons NLRB At Supreme Court In Class Action Fight

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The heat is turning up at the U.S. Supreme Court. Arguments to the Court regarding [whether class action waivers should be permitted in the employment context](#) recently just kicked off, and a major unexpected development already has emerged. On June 16, the Department of Justice (DOJ) did a 180 and filed a brief in support of three companies who are opposing the National Labor Relations Board (NLRB) before the Court. The DOJ previously supported the NLRB in the matter. Specifically, the DOJ attacked the NLRB's position and wrote that the agency had **not** given "adequate weight to the congressional policy favoring enforcement of arbitration agreements that is reflected in the [Federal Arbitration Act]." The NLRB will now be representing itself in the proceedings. At issue in the case is the NLRB's stance that class action waivers are unlawful as they pertain to employment claims because the potential formation of class actions contesting alleged unlawful employment practices is "group activity" protected by the National Labor Relations Act (NLRA). The U.S. Courts of Appeal for the Sixth, Seventh and Ninth Circuits have agreed with the NLRB's stance that such waivers are invalid under the NLRA, but the Fifth and Eighth Circuits have rejected the NLRB's arguments on grounds that the waivers are enforceable under the Federal Arbitration Act. A ruling in the case is expected later this year.

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